

PATENT

Docket No. 1963-4727

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of : Filepp et al. Group Art Unit : 2153
Serial No. : 08/933,500 Examiner : Dinh, Dung C
Filed : September 18, 1997
For : INTERACTIVE COMPUTER NETWORK AND
METHOD OF OPERATION

DECLARATION UNDER 37 C.F.R. §1.132

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

I, Frederick S. Larson, declare that:

1. I make this declaration in support of allowance of the above-identified application.
2. I was employed by Trintex, later renamed Prodigy, between 1986 and 1995.
3. My initial job title at Trintex was National Account Manager.
4. During 1988, I become Director of Membership Marketing.
5. During 1987 and 1988 I was involved in acquiring new users to test and aid in development of the Prodigy Service.
6. I am making this declaration to state my knowledge of the circumstances surrounding the testing and development of the Prodigy Service in 1987 and 1988.
7. At all times during the testing and development of the Prodigy Service, membership obligations and conditions were applied to all members on an equal basis.

8. The "Rules for the Hartford Pilot", attached hereto, is indicative of the conditions under which users participated in the testing and development of the Prodigy Service during the period from September 1987 through March 1988.

9. The "Rules for the Hartford Pilot" clearly show that the Hartford Pilot users were acquired to actively test and assist in the development of the Prodigy Service and were under strict obligations of confidentiality and nondisclosure. (Page 2)

10. It is my belief that users in the San Francisco, Atlanta and Connecticut Computer Society panels would have been treated identically to the Hartford Pilot testers with regard to membership obligations and conditions.

11. The Founding and Charter programs involved the acquisition of additional users in the previously established Hartford, San Francisco and Atlanta service areas for the purpose of testing the service over a larger user base.

12. At the time of the Founding and Charter programs, during the Spring and Summer of 1988, it was felt that the Prodigy Service was still in system test, that a significant expansion of the user base was needed to fully test the system functionality, and that this testing could identify potential points of failures in the system.

13. The Founding and Charter members were given special incentives as inducements for their hoped-for toleration of the anticipated system failures.

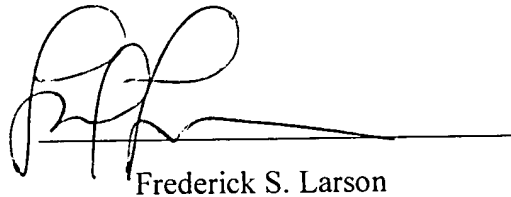
14. The names "Founding" and "Charter" were themselves chosen to convey to the users that they were being asked to participate in testing and development of something entirely new and different.

15. The Hartford, San Francisco, Atlanta and Connecticut Computer Society panels as well as the Founding and Charter programs were primarily directed to testing and development of the Prodigy Service and were not principally directed to commercial marketing of the Service.

16. The first effort to commercially market the Prodigy Service was the expansion of the Service to several California cities during the Fall of 1988.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: April 5, 2003



Frederick S. Larson

~~Hartford~~
Hartford Pilot
Sept 1987
To
March 1988

PRODIGYSM INTERACTIVE PERSONAL SERVICE

Rules for the Hartford Pilot

These Rules are an integral part of the Agreement between each Member and TRINTEX. By using the PRODIGYSM service, each Member agrees to be bound by the on-line Agreement, including all of these Rules, until the termination of their use of the service. These Rules are subject to change by TRINTEX at any time.

Membership

Membership in the PRODIGY service is not assignable or transferable to any other person, whether for a fee or otherwise.

Types of Members

Each membership in the PRODIGY service may include up to six (6) Members, consisting of a Membership Holder and five other Members who reside with the Membership Holder. The Membership Holder's rights and responsibilities are distinguished from those of the other Members in the following ways:

Membership Holders:

- o May not be minors
- o May authorize the addition of up to five (5) additional Members from their household
- o May terminate their membership and/or use of the service by Members they have authorized
- o Are responsible for payment of the charges for the PRODIGY service and for transactions/purchases made through the PRODIGY service by themselves, and for PRODIGY service charges and unpaid charges for transactions/purchases made by other Members they have authorized
- o Will be given access to billing materials that reflect details of the use of the PRODIGY service by themselves and by the Members they have authorized.

Other Members:

- o Must reside with the Membership Holder
- o May terminate their agreement for use of the PRODIGY service
- o Are responsible for payment of amounts due merchants as a result of their own transactions or purchases made through the PRODIGY service.

Each Member agrees not to use the PRODIGY service in any manner or for any purpose in violation of applicable law or these Rules.

During the Hartford Pilot of the PRODIGY service in which you are participating, each Member will play an important role in helping

determine the future scope of the PRODIGY service. During the Pilot, TRINTEX will request your comments (to help refine the content) and your active on-line participation (to help test the system). It is important that each Member maintain the integrity and confidentiality of this important proprietary Pilot by not showing, discussing with or disclosing to any non-Member the PRODIGY service, the PRODIGY software, the Service Guide, or other materials provided by TRINTEX as part of the Pilot, or their contents, and each Member agrees to abide by these requirements during and after termination of their Membership, and to return all materials to TRINTEX upon request.

Payment for the PRODIGY Service

During the Hartford Pilot, there will be no charge for use of the PRODIGY service.

Payment for Merchandise

Each Member shall pay promptly all amounts due their parties as a result of transactions they enter into through the PRODIGY service. Additionally, each Membership Holder shall pay promptly all amounts due as a result of transactions entered into through the PRODIGY service by the other Members they have authorized, if unpaid by such Member and upon request of their parties.

Payment Liability

Membership Holders shall promptly inform TRINTEX of any change in: the expiration date of any credit card used by themselves or with the authority by their authorized Members in connection with the PRODIGY service; or their home or billing address or that of any authorized Member. Membership Holders shall also promptly inform TRINTEX of any change in the expiration date of any credit card they use in connection with the PRODIGY service or in their home or billing address.

All Members shall be liable for any unauthorized use of the PRODIGY service by means of their ID and password, until such time as they have provided notice to TRINTEX of any apparent breach of security (such as loss, theft or unauthorized disclosure of a password).

Termination by Member

Membership Holders may terminate their membership in the PRODIGY service or authorized use of the service by their authorized Members at any time upon notice to TRINTEX, provided that they shall remain liable for charges incurred up to such termination. Termination of a membership automatically terminates use of the service by all Members authorized by the Membership Holder. Such Members may directly contact TRINTEX to seek to re-establish their use of the service. Any Member may terminate their use of

the PRODIGY service at any time upon giving notice to TRINTEX, provided that they shall remain liable for charges incurred up to such termination.

Members may give notice of such termination by contacting PRODIGY Membership Services by phone (800) 697-8000 or by mailing a notice to:

PRODIGY Membership Services
445 Hamilton Avenue
White Plains, NY 10601

Termination by TRINTEX

TRINTEX may terminate a Membership and all authorized Members or use of the service by any Member, in the event such Membership Holder or Member (1) fails promptly to pay any charge incurred through the PRODIGY service for which such Member is responsible, (2) has attempted unauthorized access to the PRODIGY service or any portion thereof, (3) has breached the Agreement (including these Rules), or (4) has provided false information to TRINTEX. Any terminated Member remains liable for all charges incurred up to such termination.

Access to The PRODIGY Service

Members may access the PRODIGY service only by using the PRODIGY software provided directly or indirectly by TRINTEX, and Members shall not use any other software for that purpose. The PRODIGY software is provided solely for use in accessing the PRODIGY service and may be copied in whole and given to other Members solely for such use. Members shall not use, copy or disclose the PRODIGY software for any other purposes. Use or copying of the software for any other purpose is prohibited by law. The PRODIGY software is Copyright © TRINTEX 1987; Portions Copyright © 1985, 1986 Microstar Software Software Ltd. All Rights Reserved.

Hours of access to the PRODIGY service are as stated on the service, subject to interruptions at TRINTEX's discretion.

Members are responsible for providing all personal computer and communications equipment necessary to gain access to the PRODIGY service. TRINTEX will bear the cost of delivering the PRODIGY service to certain local telephone exchanges and, except as otherwise expressly agreed to by TRINTEX during the Hartford Pilot, Members will bear the cost of the telephone charges from their personal computer to such local number exchange. Individuals wishing to access the PRODIGY service from other locations or telephone exchanges should contact PRODIGY Membership Services for information.

An ID will be assigned to each Member by TRINTEX. It will consist of a combination of seven numbers and letters. The ID is

your address on the PRODIGY service and may be disclosed to others. In contrast, the password for each Member (other than an initial, temporary password selected by the Membership Holder for authorized Members) is selected by the Member and should be treated as private information (i.e., not shared with others). Each Member must keep his or her password strictly confidential, and, for security purposes, is advised to change the password frequently.

It is a breach of the Membership Agreement to seek unauthorized access to the PRODIGY service or to restricted portions of the PRODIGY service.

Information Supplied to Members

TRINTEX has no reason to believe that errors exist in the information provided through the PRODIGY service. Given the large amount of information on the PRODIGY service, the variety of sources, and the many different uses to which information may be put, TRINTEX assumes and shall have no responsibility for the accuracy, completeness or utility of information provided through the PRODIGY service. Accordingly, TRINTEX shall have no liability whatsoever for any damages, whether direct, consequential, incidental, special, exemplary or punitive, arising in any manner from use of the PRODIGY service, even if the possibility of such damages has been brought to TRINTEX's attention. Members are responsible for checking the information they receive through the PRODIGY service and determining how to use it.

ANY LIABILITY OF TRINTEX, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR DAMAGES ALLEGED OR CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMMUNICATIONS LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORDS, WHETHER FOR BREACH OF CONTRACT, TORTUOUS BEHAVIOR, NEGLIGENCE OR UNDER ANY OTHER CAUSE OF ACTION, SHALL BE STRICTLY LIMITED TO THE AMOUNT PAID BY OR ON BEHALF OF THE MEMBER TO TRINTEX FOR THE PRODIGY SERVICE. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

NO WARRANTY IS MADE BY TRINTEX REGARDING ANY INFORMATION, SERVICES OR PRODUCTS PROVIDED THROUGH THE PRODIGY SERVICE, AND TRINTEX HEREBY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES INCLUDING WITHOUT LIMITATION (1) ANY WARRANTIES AS TO THE AVAILABILITY, ACCURACY, OR CONTENT OF INFORMATION, PRODUCTS, OR SERVICES, AND (2) ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

Material displayed on the PRODIGY service is copyrighted and may not be copied, redistributed or downloaded, in whole or in part, without the prior consent of the copyright owner, unless otherwise clearly stated. TRINTEX owns the copyright with regard to the compilation of material displayed on the PRODIGY service and the material created or acquired by TRINTEX.

In relation to any material on the PRODIGY service identified as being from Dow Jones & Company, Inc., Members are permitted to store, manipulate, analyze, reformat, print and display such material for those using such Member's personal computer only, but in no event to redistribute such material, nor to use such material in a commercial or business related manner as a person engaged in either broker/dealer activities in the purchase or sale of negotiable financial instruments or engaged in the provision of print to electronic publications and services or radio, television, and cable television services, including programming.

The public postings areas (including Bulletin Boards) do not contain copyrighted material and anyone posting information in these areas thereby consents to placement of that material in the public domain. Any Member who has reason to believe that information has been displayed in a public postings area without the authorization of the owner should promptly notify Membership Services.

Members may not copy or redistribute non-copyrighted information, data, services or materials available through the PRODIGY service for any charge or consideration whatsoever. TRINTEX may deny use of the PRODIGY service to anyone found to have violated rights of copyright owners or to have copied or redistributed non-copyrighted materials displayed on the PRODIGY service for any fee or for purposes of commercial or financial gain.

Members may reproduce copyrighted materials displayed on the PRODIGY service, solely for their own personal use, by causing limited portions of such materials to be downloaded to a computer disk or printed out on a printer attached to their computer. Members agree to comply with any and all limitations on use applicable to any particular materials available on the PRODIGY service and set forth in these Rules or displayed on the PRODIGY service in connection with such materials. When copying or reproducing any information supplied through the PRODIGY service, Members shall at all times preserve any copyright or other proprietary rights notices that may be contained in or associated with such information.

All Rules applicable to the protection of proprietary rights are for the benefit of TRINTEX and of the parties who provide information, products, or services through the PRODIGY service and each shall have the right to enforce such provisions directly and on its own behalf.

Information Supplied to TRINTEX by Members

One of the valuable and unique features of the PRODIGY service is the ability to personalize information and transaction services to each Member's interests. Much of this personalization is based on personal data regarding each Member, including data derived from the Member's use of the PRODIGY service, and the Member's responses to TRINTEX's questions and surveys. Personal data which has been provided directly by the Member to TRINTEX is available to the Member, for review or update, via a request to Membership Services. Members may be requested to supplement or update their personal data from time to time.

TRINTEX may use or disclose information regarding Members in aggregated (not individually identifiable) form for any purpose. TRINTEX may use or disclose such data, including information regarding Member's use of the PRODIGY service, in individually identifiable form only (1) for purposes of providing personalization of the PRODIGY service, (2) as necessary to provide any information, services or products offered through the PRODIGY service, (3) to make Members aware of new areas and features of the PRODIGY service which would be of special interest to them, (4) for purposes of protecting the security of the PRODIGY service or the rights or property of TRINTEX, (5) as requested by law, or (6) in any other manner deemed appropriate by TRINTEX that is consistent with these Rules and does not involve the use or disclosure of the contents of private electronic mail.

Information regarding a Member's financial holdings, medical history, or credit card number, which may be requested in certain specialized areas of the PRODIGY service in order to provide a particular product or service, shall be used or disclosed only (1) for the purposes for which such data is collected and (2) as required by law.

Private Electronic Mail

TRINTEX will not intentionally inspect the contents of private electronic mail sent by one Member to an identified addressee, or disclose such contents other than to the sender or intended recipient, without the consent of the sender or of the intended recipient, unless required to do so by law. Private electronic mail shall mean messages sent to other Members or providers of information, services or products through the PRODIGY service by means of the "Mailbox" feature.

Members authorized under the same Membership may currently send as many electronic mail messages to other Members as they wish within any month, although TRINTEX may impose charges in the future for sending such electronic mail messages above a specified amount in each month. TRINTEX reserves the right to delete private electronic mail after a certain period of time.

Information Supplied by Members through the PRODIGY Service to Other Members

Members agree not to submit, publish or display on the PRODIGY service any defamatory, inaccurate, abusive, obscene, profane, sexually explicit, threatening, illegal, or racially offensive material. Members agree not to engage, without TRINTEX's prior written consent, in advertising to or solicitation of other Members to buy or sell any products or services. Transmission of any material which constitutes infringement of any copyright or trademark, or violates any federal, state or local law, is prohibited.

TRINTEX reserves the right to review and edit any material submitted for display or placed on the PRODIGY service by a Member that may be displayed to other Members, other than by means of private electronic mail or in Closed User Group areas.

Use of Bulletin Boards

All terms and conditions stated elsewhere in these Rules (for example, under INFORMATION SUPPLIED BY MEMBERS TO OTHER MEMBERS) shall apply to use of Bulletin Boards and any and all material therein.

Bulletin Boards may be used for any lawful non-commercial purpose.

Each Member agrees to indemnify TRINTEX and hold it harmless from any claim or action whatsoever arising from use of Bulletin Boards.

Each Member agrees not to engage in advertising to, or solicitation of, other Members to buy or sell any products or services on Bulletin Boards without TRINTEX's consent. Each Member understands that submission of any material is deemed consent to placement of said material in the public domain together with the Member's name and ID.

TRINTEX reserves the right, without liability, to remove and not to display any material at the sole discretion of TRINTEX.

All Bulletin Board material will be automatically deleted according to criteria established for each.

Use of Bulletin Boards constitutes understanding of and agreement to these Rules by each Member.

Transactions Between Members and the PRODIGY Service Providers

Members may enter into various transactions with providers of information, services or products via the PRODIGY service. Members agree that all such transactions shall be solely between

themselves and such providers, and do not involve TRINTEX other than as conveyor of messages between the parties and/or recipient of information concerning such transactions. TRINTEX shall in no event be deemed a party to such transactions or liable for any actions or inactions of Members or of such providers.

Notices

Notices from Members to TRINTEX may be given by means of electronic mail through the PRODIGY service by using the "Mailbox" facility (send to ID# HELP99A), or in writing to:

PRODIGY Membership Services
445 Hamilton Ave.
White Plains, NY 10601

Members may contact content contributors or providers of information, services or products through the PRODIGY service by means of electronic mail through the PRODIGY service by using the "Mailbox" facility or by writing to the address of such contributors or providers, as displayed on the PRODIGY service or otherwise available to the public.

Notices from TRINTEX to a Member may be given by mail to the address last shown on the Member's last record at TRINTEX or via an electronic mail message through the "Mailbox" function, or public postings displayed on the PRODIGY service.

Miscellaneous

TRINTEX reserves the right to cease offering the PRODIGY service at any time upon (10) days notice to Members. These Rules and the Agreement entered into upon joining the PRODIGY service contain the entire agreement between Member and TRINTEX, supersede all prior written and oral understandings and writings, any may only be amended by subsequent change in these Rules, as displayed on the PRODIGY service or sent to Members, or by writing signed by the Member and an authorized official of TRINTEX.

The Agreement shall be governed by the laws of the state of New York, without regard to its conflict of laws rules.